

AGREEMENT

On October 9, 2018, the 60-day Notice Organizations (defined below) sent officials of the Idaho Department of Fish and Game and Idaho Fish and Game Commission a notice under Section 11(g) of the Endangered Species Act (ESA) alleging that the Idaho officials had authorized a steelhead fishery without any exemption from the prohibition against incidental take of wild (non-adipose-fin-clipped) Snake River Basin steelhead, alleging that the fishery was taking wild fish in violation of the ESA, and alleging that 2017-2018 and 2018-2019 Snake River Basin wild steelhead returns were among the lowest in more than two decades. On October 14, 2018, the 60-day Notice Organizations recommended a series of interim measures they believed would minimize harm to wild fish pending compliance with the ESA.

The State of Idaho submitted a Fishery Management and Evaluation Plan (FMEP) for its steelhead fishery to the National Marine Fisheries Service (NMFS) in 2010, which NMFS did not act on. Since 2010, Idaho conducted steelhead fisheries using the 2010 FMEP with NMFS's knowledge. Idaho revised the FMEP with updated information and, on November 6, 2018, NMFS published a notice that the FMEP is available for public comment (83 Federal Register 55,523). The public comment period on the FMEP under 50 C.F.R. § 223.203(b)(4)(iv) ends on December 13, 2018, and NMFS is expected to issue a decision on the revised FMEP by March 2019.

On November 14, 2018, the Idaho Fish and Game Commission suspended steelhead fishing, beginning on December 8, 2018, after IDFG and the 60-day Notice Organizations could not reach an interim compromise agreement.

The shared intent of the parties to this Agreement is for the 60-day Notice Organizations to agree not to sue Idaho officials or individual anglers, subject to certain conditions, described below, that include additional closures by the Commission and voluntary restrictions adopted by Idaho River Community Alliance, Inc., with respect to steelhead fishing. This is intended to be an interim, compromise agreement of the parties.

Therefore, the parties agree as follows:

I. Covenant Not to Sue

- A. The 60-day Notice Organizations, and their legal counsel, agree not to sue Idaho officials or individual anglers during Winter 2018-2019 (as defined below) regarding alleged violations of the ESA for incidental take of wild Snake River Basin steelhead during recreational steelhead fisheries authorized by the Commission/IDFG in 2018 and 2019.

II. Winter 2018-2019 Steelhead Season and Limits

- A. The above Covenant Not to Sue only becomes effective with Commission action such that:
 - 1. The following two River sections areas are closed to steelhead fishing for Winter 2018-2019:

- a. The Salmon River between its confluence with Warren Creek and the Copper Mine Boat Ramp (located approximately 2.5 miles upstream from the Salmon River's confluence with Middle Fork Salmon River); and
 - b. The South Fork Clearwater River upstream from the Mount Idaho Grade Bridge.
- 2. The daily bag limit for Winter 2018-2019 is one (1) steelhead in the mainstem Clearwater River, Middle Fork Clearwater River, North Fork Clearwater River, South Fork Clearwater River, Salmon River, Little Salmon River, and Snake River.
- B. The above Covenant Not to Sue remains effective while the above Commission action remains in effect, and while the Voluntary Measures described below are being implemented.
- C. The Commission may otherwise reinstate the steelhead fishing seasons established for 2018 and 2019 without effect to the Covenant Not to Sue above.

III. Winter 2018-2019 Voluntary Measures

- A. The Idaho River Community Alliance agrees to the following voluntary measures, measures not imposed by a rule or order, for its members' steelhead fishing activities in Idaho (in areas other than the Boise River and Snake River upstream from Hells Canyon Dam) during Winter 2018-2019:
 - 1. Use only single-pointed barbless hooks;
 - 2. Keep any adipose-fin clipped steelhead (as evidenced by a healed scar) caught in a legal manner, with recognition that Commission rules require an angler to stop steelhead fishing, including catch-and-release fishing, once an angler has reached the daily bag limit for steelhead; and
 - 3. Not remove from the water any steelhead with adipose fin intact, with recognition that Commission rules require any steelhead so caught to be released.
- B. The Idaho River Community Alliance's agreement to the preceding voluntary measures does not affect any angler's ability to use bait or boats as authorized by Commission rules.
- C. The Idaho River Community Alliance will broadly publicize the Winter 2018-2019 Voluntary Measures and within 30 days will sponsor a workshop to describe these measures for its members and other members of the public. The Idaho River Community Alliance will provide advance notice of this workshop to the other parties to this Agreement.

IV. Non-binding/Non-precedential Effect Beyond Winter 2018-2019

- A. This Agreement is a compromise regarding the conduct of steelhead fishing during Winter 2018-2019 only, during the pendency of NMFS's review pursuant to 50 CFR 223 of the

IDFG Recreational Steelhead Fisheries Management and Evaluation Plan (per 83 Fed. Reg. 55523, November 6, 2018). The terms of this Agreement do not constitute an admission of any party. No party will use this Agreement to prove or disprove any other party's position as to the scientific or policy merits of Agreement terms. The Agreement will have no binding effect or precedential value in any other current or future legal or administrative proceeding, including, but not limited to those determining the terms, conditions, or overall merits of any NMFS approval pursuant to 50 CFR 223.

V. Definitions

A. For purposes of this Agreement, the following definitions will apply:

1. "Commission" will mean the Idaho Fish and Game Commission.
2. "ESA" means the Endangered Species Act, 16 U.S.C. 1531 et seq.
3. "IDFG" will mean the Idaho Department of Fish and Game.
4. "Idaho River Community Alliance, Inc." is a nonprofit Idaho corporation organized for the long-term purpose of representing the shared interests of anglers, outfitters and guides, businesses and Idaho communities dependent on maintaining robust and viable salmon and steelhead fisheries, and preserving both wild and hatchery salmon and steelhead species.
5. "NMFS" is the National Marine Fisheries Service.
6. "60-day Notice Organizations" will mean all of the organizations who participated in a notice of intent to sue dated October 9, 2018, regarding Idaho-authorized fisheries taking Snake River Basin Steelhead, namely The Conservation Angler, Wild Salmon Rivers, Wild Fish Conservancy, Snake River Waterkeeper, and Friends of the Clearwater, but excluding Idaho Rivers United, which earlier withdrew from said Notice.
7. "Winter 2018-2019" means the period from the date this Agreement becomes effective as described in Section II.A.1–2 above until the earlier of the following: (a) the end of the day on March 15, 2019, or (b) the effective date of NMFS's incidental take authorization for Idaho's Recreational Steelhead Fisheries upon written concurrence and approval of IDFG's Recreational Steelhead Fisheries FMEP.

VI. Counterparts

- A. This Agreement may be signed in one or more counterparts by an authorized representative of each party, a scanned, signed copy of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Wherefore, after having reviewed the terms and conditions of this Agreement, the 60-Day Notice Organizations, Idaho Department of Fish and Game, and Idaho River Community Alliance hereby agree to the terms and conditions of this Agreement.

Idaho Department of Fish and Game:


Virgil Moore, Director

12/7/2018
Date

The Conservation Angler:

Printed Name:

Date

Wild Salmon Rivers:

Printed Name:

Date

Snake River Waterkeeper:

Printed Name:

Date

Wild Fish Conservancy:

Printed Name:

Date

Friends of the Clearwater:

Printed Name:

Date

Idaho River Community Alliance, Inc.:

Printed Name:

Date

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Idaho Department of Fish and Game:

Virgil Moore, Director

Date

The Conservation Angler:

Printed Name: David A. Moskowitz

December 6, 2018
Date

Wild Salmon Rivers:

Printed Name: DA Moskowitz for Peter W. Soverel

Dec 6, 2018
Date

Snake River Waterkeeper:

Printed Name:

Date

Wild Fish Conservancy:

Printed Name:

Date

Friends of the Clearwater:

Printed Name:

Date

Idaho River Community Alliance, Inc.:

Printed Name:

Date

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Idaho Department of Fish and Game:

Virgil Moore, Director

Date

The Conservation Angler:

Printed Name:

Date

Wild Salmon Rivers:

Printed Name:

Date

Snake River Waterkeeper:

F.S. Ryan, III

Printed Name: Ferrell Spencer "Buck" Ryan

12/6/18

Date

Wild Fish Conservancy:

Printed Name:

Date

Friends of the Clearwater:

Katheryn Bilodeau

Printed Name: Katheryn Bilodeau

12/6/18

Date

Idaho River Community Alliance, Inc.:

Printed Name:

Date

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Idaho Department of Fish and Game:

Virgil Moore, Director

Date

The Conservation Angler:

Printed Name:

Date

Wild Salmon Rivers:

Printed Name:

Date

Snake River Waterkeeper:

Printed Name:

Date

Wild Fish Conservancy:

Printed Name:


Kurt Beardslee

Date

12/07/2018

Friends of the Clearwater:

Printed Name:

Date

Idaho River Community Alliance, Inc.:

Printed Name:

Date

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Virgil Moore, Director

Date

The Conservation Angler:

Printed Name:

Date

Wild Salmon Rivers:

Printed Name:

Date

Snake River Waterkeeper:

Printed Name:

Date

Wild Fish Conservancy:

Printed Name:

Date

Friends of the Clearwater:

Printed Name:

Date

Idaho River Community Alliance, Inc.:

Roy Akins
Printed Name:

Roy AKINS

12-6-18
Date